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**Report of the Secretary-General on the activities of the Office of Internal Oversight Services**

# Report of the Office of Internal Oversight Services on the United Nations capital master plan for the period from August 2003 through July 2004

## Note by the Secretary-General*

1. Pursuant to General Assembly resolutions 48/218 B of 29 July 1994, 54/244 of 23 December 1999 and 57/292 of 20 December 2002, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report on the United Nations capital master plan, conveyed to him by the Under-Secretary-General for Internal Oversight Services.

2. The Secretary-General takes note of the findings and concurs with the observations made in the report, which will enhance the management of the plan.

* The present report could not be submitted prior to the deadline because the review had not been concluded at that time.

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# Report of the Office of Internal Oversight Services on the United Nations capital master plan for the period from August 2003 through July 2004

*Summary*

From August 2003 through July 2004, the Office of Internal Oversight Services (OIOS) provided continuous audit coverage of activities relating to the United Nations capital master plan, including the construction phase of the security strengthening project. OIOS audit activities, as mandated by the General Assembly in resolution 57/292, were intended to determine whether adequate internal controls were established and implemented by the Office of the Capital Master Plan and other United Nations departments and offices responsible for the execution of the capital master plan project. In that context, OIOS reviewed contracts with an aggregate value of $59 million.

Based on its review, OIOS concludes that the resources appropriated by the General Assembly for capital master plan activities were generally utilized in accordance with the United Nations Financial Rules. However, it found that United Nations operating procedures and documents related to construction contracts needed to be improved for the capital master plan project to be implemented efficiently and economically.

OIOS expresses concern that the construction documents for the security strengthening project may not be entirely adequate, because the construction manager and contract administrator were not on board during the design stage. Also, inconsistencies in the construction documents and the potential for cost savings, identified by the constructability review, apparently had not been addressed by the Office of the Capital Master Plan prior to the issuance of the request for proposals. This may create project implementation delays and cost overruns. Also, OIOS found that the guarantees provided by the contractor for the performance of the security strengthening construction contract were not adequate. It should be noted that OIOS has conducted a related review of the utilization and management of funds appropriated for strengthening the security and safety of United Nations premises. The results of that review are being communicated to the General Assembly in a separate report.

Most of the OIOS recommendations addressing the issues identified during its reviews have been implemented or are in the process of being implemented by the Office of the Capital Master Plan, with the support of the Procurement Division and the Office of Legal Affairs when needed.

OIOS will continue to oversee the capital master plan project, and will require the necessary support and resources to execute this mandate.

# I. Introduction

1. Pursuant to General Assembly resolution 57/292 of 20 December 2002, the Office of Internal Oversight Services (OIOS) hereby submits its second report on the United Nations capital master plan. The report summarizes oversight activities of OIOS for the period from August 2003 through July 2004. During this period, the Secretariat procured architectural and engineering services for the design development phase of the capital master plan and security-related construction services for the security strengthening project, for which the Office of the Capital Master Plan is now responsible. As at 30 June 2004, seven contracts were awarded, totalling approximately $59 million. Six of these contracts relate to the design development phase of the capital master plan and one is for construction work under the security strengthening project. The most recent data available concerning these contracts, provided by the Department of Management, appears in the annex to the present report.

2. During the reporting period, OIOS reviewed the requests for proposals and related bids and contract documents issued for the design development phase of the plan and the construction phase of the security strengthening project. OIOS was represented at more than 20 meetings related to the procurement process and provided comments and recommendations through formal and informal communications. OIOS is pleased to report that it received full cooperation from the departments and offices responsible for the implementation of the plan, including the Office of the Capital Master Plan, the Procurement Division and the Facilities Management Division, Office of Central Support Services, and the Office of Legal Affairs.

# II. Organization and resources of the Office of the Capital Master Plan

3. With the departure of the Executive Director of the Office of the Capital Master Plan in February 2004, the Office has, since April 2004, been headed by an officer-in-charge at the D-2 level. In June 2004, the Budget Division approved the staffing table for the Office for 2004, in response to the request made by the former Executive Director to the Under-Secretary-General for Management in June 2003 for the establishment of a new organizational structure. OIOS believes that the newly approved staffing table, composed of 11 Professional and nine General Service staff, represents significant progress towards ensuring adequate management by the Office of the design development phase of the capital master plan.

# III. Oversight activities of the Office of Internal Oversight Services during the reporting period

4. During the reporting period, OIOS carried out several audits and other significant oversight activities relating to the capital master plan, which are described below. OIOS generally provided its comments and recommendations on the spot, during meetings or immediately after its review of the documents provided by the Office of the Capital Master Plan, to ensure that such comments and

recommendations could be taken into account while preparing bids or negotiating contracts. **The Office of Legal Affairs commented that the Department of Management and OIOS might wish to consider whether the real-time involvement of OIOS had unduly complicated and burdened the process of negotiating and concluding contracts, since the Procurement Division and the Office of Legal Affairs had to address the same concerns of OIOS, not only during contract negotiations but also after the contracts had been concluded.** OIOS notes that the Office of the Capital Master Plan took into account and implemented most of the recommendations that it issued during contract negotiations. As indicated, OIOS used this method for reporting its observations to ensure that they were considered as soon as possible. It will, however, attempt to simplify the reporting procedure, in coordination with the Office of the Capital Master Plan.

5. Based on its review, OIOS concluded that the resources appropriated by the General Assembly for capital master plan activities were being utilized in accordance with the United Nations Financial Rules. However, OIOS found that the United Nations documents related to construction contracts, such as requests for proposals, general and special conditions and procedures, needed to be strengthened in order for the capital master plan project to be implemented efficiently and economically. **The Office of Legal Affairs noted in this regard that it had developed a model draft construction contract for the construction phase of the plan and was seeking specialized outside legal advice with expertise in this area.**

## A. Audit of the adequacy of standard United Nations documents and procedures for construction contracts

6. The audit assessed whether the standard United Nations documents used in the procurement of construction-related services, including requests for proposals, contracts, general conditions, general requirements and special conditions, were adequate for capital master plan contracts. In an audit report finalized in June 2004, OIOS concluded that current United Nations procedures for the procurement of construction-related services should be strengthened to accommodate the complexity and magnitude of the capital master plan project. **The Office of the Capital Master Plan agreed with OIOS and noted that the company which had been awarded the contract for programme management services (see para. 9 below) will provide project management policies, procedures, guidelines and a manual.**

7. In its report, OIOS recommended that the Office of the Capital Master Plan, with the support of the Office of Legal Affairs and the Procurement Division, strengthen or include in contract documents provisions regarding subcontractor requirements and the pre-qualification process, payment terms, record-keeping requirements, demolition and scaffolding procedures, coordination of work with others and project close-out procedures. OIOS also recommended that the Office of the Capital Master Plan use the host country industry standard procedure for evaluating the performance of contractors, which is more relevant for construction projects than the one used by the United Nations.

8. The Office accepted most of the recommendations of OIOS for immediate implementation and provided satisfactory clarifications in regard to the few remaining ones, which OIOS withdrew. OIOS is of the view that this exercise will contribute to strengthening construction contract documents, as well as contract execution and control procedures.

## B. Review of the request for proposal for programme management services

9. In November 2003, the Office of the Capital Master Plan initiated a request for proposal for programme management services to assist in providing oversight and overall coordination of the design activities of the architectural and engineering firms. Seven engineering and/or construction firms submitted proposals, and five of them were short-listed and were to provide their best and final offers. The Office of the Capital Master Plan and the Procurement Division were reviewing these offers and finalizing the selection of a contractor. OIOS attended the verbal presentations made by the seven firms, and suggested additional areas in which prospective vendors needed to demonstrate sufficient experience, such as programme management, construction management, refurbishment and preservation of artefacts. OIOS also suggested that the Office of the Capital Master Plan consider a firm's resource availability and its knowledge of the major construction work in progress in the New York metropolitan area, which could affect the labour market during the refurbishment of United Nations Headquarters. In addition, OIOS attended the presentations by the firms of their commercial proposals, and provided a critical analysis of the labour hours and prices that they submitted. The Office of the Capital Master Plan took into account all of the recommendations made by OIOS.

## C. Review of the contracts for the design development phase of the capital master plan

10. The United Nations entered into contracts A to F (see annex) with professional firms to provide design and engineering for the refurbishment work. In its report to the General Assembly at its fifty-eighth session (A/58/342), OIOS concluded that the request for proposal for selecting architectural and engineering firms for the design development phase of the capital master plan had advanced satisfactorily and that there was reasonable assurance to indicate that the process had been transparent and fair and that internal controls were adequate. In its recent review, OIOS focused on the contracting process following the receipt of vendor proposals and the development by the Office of the Capital Master Plan of monitoring procedures for general services under contracts A to F.

11. The Office of the Capital Master Plan sought the views of OIOS regarding the use of unified contract language for all six contracts, with necessary variations in the scope of work of each. OIOS supported the concept of the Office, which was based on a similar practice in the host country and in the construction industry in general. OIOS reviewed the proposed unified draft contract language to ensure it provided adequate guarantees for the United Nations against any deficiencies in the design documents, and was satisfied as a result of its review. **The Office of Legal Affairs commented that it would recommend that the Organization follow host**

**country practice when it is in the interests of the Organization to do so. The Organization is not subject to the jurisdiction of the host country, but relies in its contracting on general principles of commercial law. The Office of Legal Affairs expressed the view that each contract should be negotiated separately, with a view to concluding a contract that most fully protects the interests of the Organization.** OIOS acknowledges these comments, and wishes to point out that it also views host country practice as a useful reference in the case of the capital master plan, not as a mandatory requirement. Also, OIOS is of the view that the use of unified contract language, while the most effective approach, would not prevent the Organization from negotiating each contract separately.

12. OIOS provided several on-the-spot observations during the presentations by the professional firms of their plans of action to the Office of the Capital Master Plan. In addition, it provided comments on the procedures developed by the latter for evaluating the general services provided under the contracts. The comments and suggestions of OIOS were accepted and incorporated into the contracting documents and monitoring procedures, thereby strengthening them.

## D. Security strengthening project at United Nations Headquarters

13. OIOS assessed whether the scope, drawings, specifications and cost estimates for the security strengthening project were developed and reviewed independently prior to the solicitation of bids in order to ensure the accuracy and completeness of the construction documents. It is standard practice in the construction industry to perform such a review, known as a constructability review, and to address any issues identified by the reviewer before the issuance of a request for proposals. OIOS has also completed a related in-depth review of the utilization and management of funds appropriated during the biennium 2002-2003 for the implementation of measures to strengthen the security and safety of United Nations premises, as mandated by the General Assembly in resolution 58/295 of 18 June 2004. The results of that review are being reported separately to the General Assembly.

14. The Office of the Capital Master Plan used the preliminary design documents prepared for the capital master plan security work for the security strengthening project, which provided a basis for the much larger security programme related to contract F (see annex). However, OIOS observed that only a limited constructability review of the specifications document and drawings had been performed by the Office. The constructability review identified the need to resolve several differences between the contract drawings and specifications, clarify ambiguous language, bring certain areas into compliance with the New York City electrical code, and achieve potential cost savings. OIOS did not find evidence that the Office of the Capital Master Plan had subsequently addressed those issues before the request for proposal was issued. **The Office of the Capital Master Plan provided clarification, explaining that the constructability review also covered phasing for construction documents and a sequencing plan. The comments contained therein were reflected in the final contract drawings, which were released to bidders at the end of June 2003. Further adjustments were made to the contract drawings, in the form of amendments, in the light of the comments received from bidders in the course of their review of drawings.**

15. OIOS observed that the construction manager and contract administrator were not in place during the design phase of the security strengthening project to undertake a quality assurance review of the construction documents, including the scope report, cost estimates, specifications and drawings, and the value engineering report. In its view, there was a risk that the construction documents may contain inconsistencies or inefficiencies, which in turn may create delays and cost overruns for the project. OIOS will complete its review of the project's construction documents in the near future, and will report its findings and recommendations to the Office of the Capital Master Plan.

16. OIOS reviewed the contractor selection process and recommended that the Office of the Capital Master Plan obtain background investigation reports on prospective contractors, subcontractors and consultants. This suggestion was immediately implemented and resulted in the disallowance of one of the subcontractors. OIOS also recommended the inclusion in requests for proposals of a requirement that contractors, subcontractors and consultants perform background investigations of employees who would work on United Nations projects, as is generally done in the host country construction industry and in government contracts. **The Office of Legal Affairs noted that this issue was addressed in article 3 of the United Nations General Conditions of Contract, the scope of which could actually be narrowed if the recommendation were implemented. The Office of Legal Affairs stated that, in the light of the events of September 2001, if the Organization were to require such background investigations, the issue should be reviewed by the Security and Safety Service.** OIOS will continue to follow up this issue with the Department of Management and the Office of Legal Affairs. Also, OIOS provided a number of comments on various articles of the project's draft construction contract. Most of those comments were accepted and incorporated in the subsequent revision of the draft contract.

17. OIOS reviewed the guarantees provided by the selected contractor for the performance of the contract and concluded that the interests of the United Nations were not adequately safeguarded because the Office of Central Support Services accepted lesser guarantees from the selected contractor than it usually did for construction-related contracts. These guarantees only provided 17.5 per cent protection coverage for the $21.6 million project (or $3.8 million), which is significantly less than the United Nations standard requirement of 27.5 per cent which would have resulted in coverage of $5.9 million or the industry standard security coverage of 210 per cent, or $45.4 million. Furthermore, the Office was of the view that the letter of credit which replaced the normal performance bond afforded the United Nations less protection against the contractor's poor performance. **The Office of Legal Affairs did not comment on the amounts of the guarantees provided but clarified that the letter of credit, as with a performance bond, should be irrevocable, its proceeds available without the need for arbitral or judicial proceedings, and the money delivered immediately by the issuer without objection or recourse. The Department of Management stated that, like OIOS, it supported obtaining the highest guarantees but noted that the contracting process had reached a stalemate and not to have done anything would have been far more serious. The Office of Legal Affairs and the Procurement Division had therefore identified a practical way forward which offered a measured degree of protection.**

# IV. Conclusion

18. In the next reporting period, OIOS will concentrate on reviewing the implementation of architectural and engineering contracts. The resources allotted to OIOS from the appropriation for the capital master plan during the current reporting period allowed for the recruitment of one auditor on a short-term basis. This was not sufficient to provide the oversight coverage intended by the General Assembly in resolution 57/292. OIOS had to assign another senior auditor to form the audit team exclusively responsible for the capital master plan. Based on the projected activities of the plan to be carried out in 2005 and ensuing years until the end of the design development phase, OIOS expects that it will need to allocate at least 600 workdays to capital master plan audit activities. This would require two full-time auditors experienced in construction audit and related issues, as well as the involvement of the management of OIOS and the Internal Audit Division. **The Department of Management commented that activities funded under the capital master plan would be fewer than originally planned owing to funding issues. Regarding activities relating to the security and safety upgrades which are funded by the regular budget, internal audit funds are already provided under section 30, Internal oversight, of the regular budget.** OIOS notes the comment of the Department but wishes to stress that, alone, the current audit resources allocated to OIOS for the capital master plan are insufficient to provide adequate audit coverage. OIOS therefore reiterates that oversight resources should be increased to provide for the services of two full-time auditors.

(*Signed*) Dileep **Nair**
Under-Secretary-General for Internal Oversight Services

# Annex

## Contracts for the capital master plan (design development, construction document and construction administration phase) and for the security strengthening project

| *Contract* | *Capital master plan component* | *Contract signature date* | *Design development phase* | *Construction document phase* | *Construction administration phase* | *Additions/ other services* | *Contract amount* |
|---|---|---|---|---|---|---|---|
| A | Functional relocation programme | 2/1/04 | 523 273.00 | 171 565.00 | 85 783.00 | 77 204.00 | 857 825.00 |
| B | Infrastructure, basement, garage, North Lawn and United Nations Institute for Training and Research building | 25/6/04 | 2 513 567.50 | 4 524 421.50 | 3 016 281.50 | 2 214 901.00 | 12 269 172.50 |
| C | General Assembly and conference buildings | 25/6/04 | 2 883 713.25 | 5 190 683.85 | 3 460 455.90 | | 11 534 853.00 |
| D | Secretariat and south annex building | Contract not signed as at 1/8/04 | 1 664 604.70 | 2 996 288.60 | 1 997 525.70 | | 6 658 419.00 |
| E | Dag Hammarskjöld Library building | 25/6/04 | 519 491.75 | 935 085.15 | 623 390.10 | | 2 077 967.00 |
| F | Security | 25/6/04 | 1 053 110.00 | 1 895 598.00 | 1 263 732.00 | | 4 212 440.00 |
| **Total** | | | **9 157 760.20** | **15 713 642.10** | **10 447 168.20** | **2 292 105.00** | **37 610 676.50** |
| Security strengthening project | Security strengthening project at United Nations Headquarters — construction phase | 31/3/04 | | | 21 579 506.00 | | 21 579 506.00 |
| **Total, capital master plan and security strengthening project** | | | | | | | **59 190 182.50** |

*Note*:

1. Figures are in United States dollars.
2. The request for proposal (RFPS 466) issued in February 2003 for the design development phase of the capital master plan was structured into six separate contract areas (contracts A to F).
3. No payments were made relating to the contracts as at 30 June 2004.
4. The amounts on contract D are those from the financial proposal of the engineering and architectural firm.